BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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In the Matter of the Application of PACIFICORP (U 901 E) for Authority to Sell Certain Mining Assets in Accordance with Public Utilities Code Section 851.	Application 15-09-007 (Filed September 18, 2015)

SUPPLEMENTAL BRIEF ON APPLICABILITY OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO A.15-09-007

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In accordance with the directive contained in the Scoping Memo and Joint Ruling of Assigned Commissioner and Administrative Law Judge issued May 31, 2016, PacifiCorp, d/b/a Pacific Power (PacifiCorp or the Company), submits its brief on the applicability of the California Environmental Quality Act (CEQA) to Application 15-09-007. The Scoping Memo specified eight questions to be addressed by the parties in their briefs. The answers to these questions show that CEQA is inapplicable to the sale of the mining assets located in Utah, that the transaction will not have a significant adverse impact on the environment, and that the Commission is not the appropriate agency to conduct an environmental review of the sale. The Commission's consideration of A.15-09-007 should not include CEQA review.

I. BACKGROUND

PacifiCorp is a multi-jurisdictional utility providing electric retail service to customers in California, Idaho, Oregon, Utah, Washington, and Wyoming. In California, PacifiCorp serves approximately 45,000 customers in portions of Del Norte, Modoc, Shasta, and Siskiyou counties.

In December 2014, PacifiCorp sought regulatory approval from five state utility commissions for its proposed closure of the Deer Creek Mine, located in Emery County, Utah. The Deer Creek transaction consisted of four major elements: (1) the permanent closure of the Deer Creek Mine; (2) withdrawal from the United Mine Workers of America (UMWA) 1974 Pension Trust; (3) the sale of certain Mining Assets; and (4) execution of a replacement coal supply agreement for the Huntington generating plant in Utah and an amended coal supply agreement for the Hunter generating plant, also located in Utah. PacifiCorp also settled its retiree medical obligation in connection with the mine closure. The only part of the transaction that involved the sale of utility property, and was therefore subject to Commission jurisdiction under Public Utilities Code section 851, was the sale of the Mining Assets: a preparation plant and related assets; a central warehouse and other remainder assets; and the Trail Mountain Mine, which closed in 2001, and related assets. The net book value of the Mining Assets was $305,000 on a California-allocated basis.

PacifiCorp acquired the Deer Creek Mine in 1977. Until its closure, the mine was the primary source of coal for PacifiCorp's nearby Huntington generating plant and also supplied some coal to the company's Hunter plant and Carbon plant (which closed in 2015). The Deer Creek Mine's depreciable life ran through its expected reserve depletion in 2019; the Huntington and Hunter plants' depreciable lives in California run through 2036 and 2042, respectively. PacifiCorp proposed to close the Deer Creek Mine before it reached the end of its depreciable life for two major reasons: the mine was producing lower-quality coal, which reduced the total volume of coal produced; and the mine's pension liabilities and mining costs were steeply increasing. Market supplies in Utah were more readily available, while the advantages of

owning coal mining assets in Utah had decreased. These combined factors made continued operation of the Deer Creek Mine less economic than closure.

The three sets of assets in California rate base that were sold to Bowie as part of the mine closure were all located in Utah. The preparation plant was used to blend coal for the Hunter plant to achieve coal quality specifications. The preparation plant assets included equipment, surface assets, certain fee lands, and working capital assets related to and near the plant. The central warehouse facility was located near Castle Dale, Utah; the central warehouse assets sold to Bowie included mining equipment, surface assets, and additional fee lands. The Trail Mountain Mine closed in 2001 due to depletion of its reserves, though it had not been reclaimed. The Trail Mountain Mine assets Bowie acquired as part of the transaction included a parcel of real property, coal leases, and related assets. Bowie also agreed to assume and discharge certain liabilities, including all mine reclamation and asset retirement obligations for the Trail Mountain assets.

The portion of the Deer Creek Mine closure transaction approved by the Utah and Wyoming Public Service Commission included the Fossil Rock mineral leases[1] as a fourth set of Mining Assets sold to Bowie by Fossil Rock Fuels, LLC.[2] Fossil Rock Fuels, a wholly-owned subsidiary of PacifiCorp, is not subject to Commission regulation or an "affiliate" within the meaning of the Commission's Affiliate Transaction Rules,[3] and its assets are not utility assets under the Commission's purview. Fossil Rock Fuels was formed for the purpose of holding and

[1] The Fossil Rock leases were included in PacifiCorp's FERC account 105 as Plant Held for Future Use, which was allowed in rates in Utah and Wyoming and therefore required the approval of the Utah and Wyoming commissions. The Fossil Rock Plant Held for Future Use was not included in rates in California, Idaho, and Oregon, and did not require the approval of those commissions.
[2] *See* Direct Testimony of Cindy A. Crane (Public Version), Docket No. 14-035-147 (filed December 15, 2014), pp. 6, 8, 11–12, 25–26.
[3] *See* Affiliate Transaction Rules, Rule II.B.

administering the Fossil Rock coal leases, which were acquired in 2011 from Arch Coal Company but were never developed. As with the Trail Mountain Mine assets, as part of its purchase of the Fossil Rock leases Bowie agreed to assume and discharge all mine reclamation and asset retirement obligations, and the obligations related to coal or equipment leases and permit-related obligations arising after the close of the transaction. The Fossil Rock leases were never developed by the Company and today they remain undeveloped by Bowie.

The preparation plant and central warehouse assets are being used in the same manner as they were before the transaction; the Trail Mountain Mine will eventually be reclaimed, which will restore the property to its natural state and will result in a net environmental benefit. The sale of the three sets of Mining Assets—the only portion of the Deer Creek closure transaction that is properly before the Commission—will not have a significant impact on the environment.

II. APPLICABILITY OF CEQA TO A.15-09-007

The questions posed by the Scoping Memo are set forth and answered below:

A. Is the sale of mining assets in Utah a project pursuant to CEQA?

1. The sale of the Mining Assets

No. The sale of the three sets of Mining Assets in connection with the closure of the Deer Creek Mine is not a project within the meaning of CEQA. A "project" subject to CEQA review is an activity that may cause a direct or reasonably foreseeable indirect physical change to the environment.[4] The Commission recognizes that the sale of assets does not cause any direct physical change in the environment unless construction is required as a condition of

[4] Pub. Res. Code § 21065; Cal. Code Regs., tit. 14, § 15378(a).

sale.[5] The Commission also recognizes that indirect physical changes to the environment do not occur where the asset is used for the same purpose before and after the transfer of ownership.[6]

The central warehouse, preparation plant, and Trail Mountain Mine assets are being used for the same purpose and in the same manner as they were used before the sale.[7] None of the assets have been significantly modified,[8] and the eventual reclamation of the long-defunct Trail Mountain Mine will benefit the environment. No new mining rights were created by the transaction. There have been no direct or indirect adverse impacts on the environment as a result of the Mining Asset sale; the sale is therefore not a project subject to CEQA.

2. Sierra Club's allegations of expanded coal mining and export through California

Sierra Club's allegations that Bowie intends to use the Trail Mountain Mine assets and the Fossil Rock coal leases to increase coal extraction and export by rail through California[9] do not, even if they were true, make the sale of the Mining Assets a project subject to CEQA. The transfer of assets is not a "project" for CEQA purposes where, even if some development of

[5] *Application of PG&E and the City of Santa Rosa, etc.*, D.98-07-069, pp. *4–5. *See also Application of Ambler Park Water Utility and Cal-Am Water Company, etc.*, D.98-09-038, pp. 13–14; *Application of PG&E for an Order Authorizing Transfer of the Photovoltaics for Utility Scale Applications Research Project, etc.*, D.97-07-019, p. *8.

[6] D.98-07-069, pp. *4–5.

[7] *See Simmons v. City of Los Angeles* (1976) 63 Cal.App.3d 455, 465 (holding that a proposed charter amendment to transfer park land that had been used for police training for 40 years was not a project because the amendment merely continued an existing use without environmental change).

[8] *Cf. Application of PG&E to Establish Market Values for and to Sell its Richmond-to-Pittsburg Fuel Oil Pipeline, etc.*, D.05-07-016, pp. 8–15 (requiring CEQA review of the proposed sale of PG&E's pipeline and pump station, which involved significant changes to the assets and their existing use).

[9] Sierra Club Protest of A.15-09-007, p. 7. PacifiCorp notes that Sierra Club's allegations are all made on "information and belief" and lack any factual support. Moreover, the Fossil Rock leases are not in California rates, were owned by a subsidiary outside the scope of the Affiliate Transaction Rules, and have never been before this Commission.

the assets is reasonably foreseeable, there is no concrete development proposal.[10] Where no development proposal exists, CEQA review is premature because the lead agency cannot perform a meaningful analysis of the potential impacts.[11]

PacifiCorp is unaware of any specific plan to develop the Fossil Rock leases. No evidence has been presented that the Trail Mountain Mine or Fossil Rock leases will be involved in any export operations. The Commission cannot analyze the impacts of coal mining and export plans that do not exist. Because the potential impacts cannot be analyzed, and because Sierra Club has not offered any proof of the alleged development plans or export proposals involving the Mining Assets, the sale of the Mining Assets cannot be considered a project subject to CEQA review.

B. What authority does the Commission have to do a CEQA review on a project in Utah?

Assuming the Commission could properly act as the lead agency, which it cannot,[12] it only has authority to review greenhouse gas (GHG) emissions that will likely result from an out-of-state project.[13] A lead agency must exercise "careful judgment" in determining if there is substantial evidence that the project's potential GHG impacts may have a significant effect on the environment.[14] The record in this proceeding lacks evidence, substantial or otherwise, that the sale of the Mining Assets will result in GHG impacts in California. The sale is not expected to result in incremental volumes of coal being burned at, or extend the lives of,

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[10] *Friends of the Sierra Railroad v. Tuolumne Park & Rec. Dist.* (2007) 147 Cal.App.4th 643, 647, 651.
[11] *Id.* at pp. 654–655.
[12] Pub. Res. Code, § 21067; *see also* discussion in Section II.C.
[13] *See* Draft Initial Study/Negative Declaration for Four Corners Generating Station Project (September 2011), at pp. 2-3 to 2-4 (concluding that the Commission's review of the sale of SCE's interest in assets located in New Mexico was limited to GHG emissions affecting California); *see also* Cal. Code Regs., tit. 14, § 15064.4.
[14] Cal. Code Regs., tit. 14, §§ 15064, 15064.4.

PacifiCorp's Utah generating plants,[15] which have depreciable lives in California that run long past the expiration of the coal supply agreements. And while the coal supply agreements are part of the larger transaction that is outside the Commission's purview under Public Utilities Code section 851, the transaction as a whole will not impact the operations of the Utah generating plants.[16] There is no basis on which the Commission could review the sale of the Mining Assets under CEQA.

C. If CEQA is triggered, is the Commission the appropriate CEQA lead agency and why?

No. The lead agency for CEQA review is the public agency with the greatest responsibility for supervising or approving the project *as a whole*.[17] The Mining Assets are one discrete element of a larger transaction, the physical assets of which are located in Utah, and which required approval of five state public utility Commissions. The California-allocated portion of the estimated net book value of the Mining Assets, which had a total-company net book value of millions of dollars, was $305,000. PacifiCorp's California retail customers contribute less than two percent of its system requirements—the Commission regulates a small fraction of PacifiCorp's operations. No configuration of the facts of the transaction or the Commission's jurisdiction allow the conclusion that the Commission is the agency responsible for overseeing and approving the project as a whole.

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[15] *See* Sierra Club Protest of A.15-09-007, pp. 6–7.

[16] If Sierra Club resurrects its argument that PacifiCorp's GHG emissions are much higher than California's emissions performance standard, PacifiCorp notes that the Commission approved an alternative compliance plan for multi-jurisdictional utilities in D.07-01-039. PacifiCorp qualifies for this alternative compliance plan because its GHG emissions are reviewed by other state utility commissions as part of its resource planning process. (PacifiCorp Reply to Sierra Club Protest of A.15-09-007, p. 8.) In any event, Sierra Club's argument is irrelevant to the question whether CEQA review is appropriate here.

[17] Pub. Res. Code, § 21067; Cal. Code Regs., tit. 14, § 15051; *Application of SCE for Authority to Lease Available Land, etc.*, D.10-06-010, p. *9.

The Public Service Commission of Utah reviewed all four elements of the Deer Creek Mine closure transaction and approved a settlement agreement that encompassed the mine closure, the pension trust withdrawal, the sale of the Mining Assets (including the Fossil Rock leases), the coal supply agreements for the Huntington and Hunter plants, and ratemaking treatment of the Utah-allocated costs associated with the transaction.[18] The parties to the settlement agreement and the Utah Commission concluded the entire transaction was in the public interest.[19]

The Public Utility Commission of Oregon determined that the closure of the mine was in the public interest and that the sale of the Mining Assets would not harm PacifiCorp's customers; Sierra Club concurred.[20] The Oregon Commission also considered PacifiCorp's requests for ratemaking treatment of the Oregon-allocated costs associated with the mine closure, pension withdrawal liability and retiree medical obligation, and loss on sale of the Mining Assets.[21] The Oregon Commission believed the coal supply agreements did not require regulatory approval at that time and were separable from the rest of the transaction; the Commission deferred any determination of the reasonableness of the coal supply agreements to a future power cost proceeding if PacifiCorp sought to recover the associated fuel costs.[22] The Oregon Commission dismissed as premature Sierra Club's concerns that the coal supply agreements might subject PacifiCorp to uneconomic financial commitments in the future or

[18] Public Service Commission of Utah Order in Docket No. 14-035-147 (issued April 29, 2015), and attached Settlement Stipulation.
[19] The settlement agreement was entered into by all parties to the proceeding: PacifiCorp; the Division of Public Utilities; the Utah Association of Energy Users; the Office of Consumer Services; and Sierra Club.
[20] Public Utility Commission of Oregon, Order No. 15-161, in Docket No. UM 1712 (issued May 27, 2015), at pp. 4, 9.
[21] *Id.* at pp. 5–10.
[22] *Id.* at pp. 11–12.

complicate decisions to shut down or continue operating coal units, and declined to pass judgment on the agreements.[23]

The Idaho Public Utilities Commission examined the reasonableness of, and ratemaking treatment associated with, the Idaho-allocated portions of closing the Deer Creek Mine, withdrawing from the pension trust and settling the retiree medical obligation, selling the Mining Assets, and entering into the coal supply agreements with Bowie.[24] The Idaho Commission found the transaction was in the public interest,[25] and deferred a final determination of the prudency of specific costs until actual costs were established and presented to the Commission in PacifiCorp's next general rate case.[26]

The Wyoming Commission also found the entire transaction prudent[27] and accepted a settlement agreement setting the terms for cost recovery and ratemaking treatment of the Wyoming-allocated portions of PacifiCorp's unrecovered investment in the Deer Creek Mine, loss on sale and rate of return for the Mining Assets (including the Fossil Rock leases), the pension withdrawal liability, the medical obligation, the mine closure costs, the net mine-related construction work in progress (CWIP), and the coal supply agreements.[28]

In California, the Commission often acts as a responsible agency[29] for Section 851 transactions because the local government entity where the project is located has

[23] Public Utility Commission of Oregon, Order No. 15-161, p. 12.
[24] Public Utilities Commission of Idaho, Order No. 33304 (issued May 27, 2015), *passim*; *see also id.* at p. 14.
[25] *Id.* at pp. 14–15.
[26] *Id.* at p. 15.
[27] Public Service Commission of Wyoming, Order in Docket No. 20000-464-EA-14 (issued May 15, 2015), p. 4.
[28] *Id.*, Appendix A, Stipulation and Agreement, pp. 3–10.
[29] Cal. Code Regs., tit. 14, §15050; Pub. Res. Code, § 21069.

responsibility for supervising and approving the project as a whole.[30] As a responsible agency, "the Commission exercises narrower jurisdiction by determining whether the transaction meets the requirements of § 851."[31] For purposes of A.15-09-007, the Commission has authority to review the sale of utility assets in PacifiCorp's California rate base under Public Utilities Code section 851. PacifiCorp has not sought ratemaking treatment for the loss on sale of the Mining Assets. The Commission therefore has only the sale of the Mining Assets—the preparation plant and related assets, the central warehouse and other remainder assets, and the long-shuttered Trail Mountain Mine and related assets—to consider. By contrast, the entire transaction and the state-specific ratemaking treatment of over 98 percent of the associated costs have been reviewed and approved by four other state utility commissions, each with jurisdiction over a significantly larger portion of PacifiCorp's operations than California. The criteria for a lead agency under CEQA are clear: this Commission does not have the principal responsibility for carrying out and approving the Deer Creek Mine closure transaction as a whole.[32]

D. <u>If the Commission is not the appropriate CEQA lead agency, what other lead agency would be the appropriate CEQA lead agency?</u>

Lead agencies are normally entities with general governmental powers, such as cities or counties, as opposed to an agency with a single limited purpose.[33] A lead agency for projects located outside California must have authority over any emissions or discharges resulting from that project that would have a significant effect on the environment in California.[34] Assuming CEQA applied to the sale of the Mining Assets, which it does not, it is unclear how any resulting discharges or emissions, none of which are anticipated, would have a

[30] *Application of PG&E and Topaz Solar Farms, LLC, etc.*, D.11-07-040 (2011 Cal. PUC LEXIS 408), p. *12.
[31] *Ibid.*
[32] Pub. Res. Code, § 21067; Cal. Code Regs., tit. 14, § 15051.
[33] Cal. Code Regs., tit. 14, § 15051(b)(1).
[34] Cal. Code Regs., tit. 14, § 15277.

significant effect on the environment in California such that California's authority over those emissions or discharges would be triggered. There is no city or county in California that can assert authority over a project located in Utah, and the Commission is not the appropriate agency to regulate emissions or discharges for purposes of CEQA.[35] As there are no anticipated discharges or emissions resulting from the Mining Asset sale that will impact California, no California agency has any basis for asserting lead agency status.

E. <u>If the sale of mining assets in Utah is a project pursuant to CEQA, is the project categorically or statutorily exempt from CEQA?</u>

Yes. If the sale of the Mining Assets located in Utah were a project within the meaning of CEQA, which it is not, then the sale would fall under the existing facilities categorical exemption and the common sense exemption.[36]

The existing facilities exemption applies to projects that consist of the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."[37] The key consideration is whether a project involves no, or negligible, expansion beyond the existing use.[38] This categorical exemption applies to the transfer of ownership of an asset that will result in negligible or no expansion beyond the asset's current use[39] or that will restore an asset to its original authorized capacity.[40] The preparation plant

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[35] *See, e.g.*, *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1588 (finding that the project would likely create additional NOx emissions that would have a significant impact on the air within the jurisdiction of the regional air pollution control district).
[36] Cal. Code Regs., tit. 14, §§ 15301, 15061(b)(3).
[37] Cal. Code Regs., tit. 14, § 15031.
[38] *Ibid.*
[39] *Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966–967; *see also Application of SoCalGas to Amend its CPCN for the Honor Rancho Natural Gas Storage Facility*, D.10-04-034 (2010 Cal. PUC LEXIS 144), p. *11 (finding that the proposed storage

assets are being used for the same purpose and in the same manner by Bowie as they were used by PacifiCorp. The central warehouse assets continue to be used by Bowie as they were used by PacifiCorp. The Trail Mountain Mine assets have not been put to a different use, and, as Bowie has assumed the remediation and restoration obligations associated with the assets, they will eventually be returned to their natural state. The sale of the Mining Assets has not resulted in any expansion or change from their existing uses; the categorical exemption for existing facilities applies.

The common sense exemption applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant, or potentially significant, adverse effect on the area affected by the project.[41] The sale of the Utah Mining Assets, which involves a straightforward transfer of ownership, will not adversely affect the environment. The assets are being used in the same manner and for the same purpose as they were before the sale. And the eventual reclamation of the Trail Mountain Mine to its natural state—which will be subject to permitting and environmental review by the appropriate agency in Utah—will ultimately provide a net environmental benefit.[42] The Mining Asset sale has not

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capacity expansion qualified for the existing facilities exemption because it involved negligible expansion of an existing use); *Application of PG&E for Authority Pursuant to § 851 to Grant an Easement to Sunrise Power Company, etc.*, D.04-10-018 (2004 Cal. PUC LEXIS 513), p. *7 (proposed modifications to existing substation facility were exempt from CEQA because they would result in a negligible expansion of an existing use).

[40] *See Committee for a Progressive Gilroy v. State Water Resources Control Board* (1987) 192 Cal.App.3d 847, 864 (ruling that a city wastewater project originally approved for the treatment of 6.1 mgd, which was operating below capacity, qualified for the existing facilities exemption and did not require CEQA review to restore its operations to the original 6.1 mgd allowance).

[41] Cal. Code Regs, tit. 14, §§ 15061(b)(3), 15382.

[42] *See Creed-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 512 (finding the city's revegetation project was exempt from CEQA under the common sense exemption because no adverse changes to the environment would result).

had a significant adverse effect on the environment. The transaction is excused from CEQA review under the common sense exemption.

F. <u>If the project is neither categorically nor statutorily exempt and the Commission is the appropriate lead agency, what type of CEQA review should the Commission undertake?</u>

There is no substantial evidence in the record that shows direct or indirect adverse effects on the environment will result from the sale of the Mining Assets in Utah. Any purported evidence submitted later in this proceeding must be viewed within the proper scope of the transaction before the Commission for approval. In the course of reviewing any such evidence, the Commission's determination of the impacts substantiated by that evidence—negligible, susceptible to mitigation, not capable of being mitigated, etc.—will dictate the type of CEQA review undertaken by the Commission.[43]

G. <u>What are the environmental impacts in California related to the sale of mining assets in Utah?</u>

There are no environmental impacts in California. As discussed above, the three sets of Mining Assets that are the subject of A.15-09-007 are being used for the same purpose, and in the same manner, as before the sale. Because the assets are not being put to a different use, their continued operation and use has not impacted the environment. Neither is the transaction expected to result in incremental GHG emissions. With the closure of the Deer Creek Mine and eventual reclamation of the Trail Mountain Mine, the transaction provides a net environmental benefit.

The elements of the transaction that are *not* subject to Commission review also will not result in environmental impacts in California. Any increase in truck traffic in the region where the Huntington generating plant is located does not amount to a substantial increase that

[43] *See, e.g.*, Cal Code Regs., tit. 14, § 15063 (initial study); *id.* at § 15070 (negative declaration); *id.* at § 15081 (environmental impact report).

will adversely impact the environment.[44] Historically, the Huntington plant has received significant tonnage volumes of third-party coal for blending purposes when the Deer Creek Mine was producing lower-quality coal; these deliveries came by truck. At the same time, coal from Deer Creek was shipped by truck from the Huntington plant to the Hunter plant. The trucks providing the replacement coal purchased from Bowie under the coal supply agreement will either be rerouted to the Huntington plant instead of serving the previous customer(s) or will replace deliveries that would have occurred by other means. Additionally, overall coal production for the region has not increased. Because the coal supply agreement simply maintains the status quo for operations at the Huntington plant, and because supplying Huntington will not increase the total amount of coal produced and transported in Utah, there is no evidence to support an argument that increased truck traffic to the Huntington plant will have a significant impact on the environment.

There is also no evidence in the record that the transaction will increase coal stockpiles at the Huntington plant.[45] To the contrary, the frequent deliveries from Bowie—as opposed to mining, blending, and storing the coal essentially on site—will reduce inventory levels at Huntington. And any runoff from the coal inventory is being managed through permits issued by the State of Utah; PacifiCorp is in compliance with Utah regulations regarding proper coal storage.[46]

Finally, there is no evidence that Bowie has a plan to develop the Fossil Rock mineral leases and export significant volumes of coal by rail through California. The Fossil

[44] *See* PacifiCorp Reply to Sierra Club Protest of A.15-09-007, p. 9.
[45] Sierra Club Protest of A.15-09-007, p. 7; PacifiCorp Reply to Sierra Club Protest of A.15-09-007, p. 9.
[46] *See* Utah Division of Air Quality, Approval Order No. DAQE-AN0238008A-03, Operating Permit No. 1501001002.

Rock leases were undeveloped when Fossil Rock Fuels sold them to Bowie, and they remain undeveloped today. Developing the leases would require a substantial expenditure and subject Bowie to a lengthy permitting process. Even if Bowie hopes to develop the leases in the future, the possibility that the Fossil Rock leases would actually be mined and the coal exported through California is so remote and speculative that no meaningful estimation of the resulting impacts can be made at this time.

There will be no environmental impacts in California from the sale of the Mining Assets or from the Deer Creek Mine closure transaction as a whole.

H. Does A.15-09-007 raise any safety issues?

No. The transfer of Mining Assets located in Utah does not raise safety issues. The assets are being used for the same purpose and in the same manner as before the sale, and there will be no significant adverse impacts on the environment. Therefore, there are no physical, operational, or environmental safety concerns implicated by this application.

III. CONCLUSION

The Commission should find CEQA is inapplicable to A.15-09-007. PacifiCorp's sale of three sets of Mining Assets located in Utah is not a project that requires CEQA review. If the sale were a project, it is categorically exempt from CEQA. Because the closure of the Deer Creek Mine was examined and approved by four other state utility commissions, who collectively have jurisdiction over more than 98 percent of PacifiCorp's operations and a commensurate portion of the transaction, the Commission is not the appropriate lead agency for CEQA. Conducting a full-scale environmental review of a project over which the Commission has limited jurisdiction would be an inappropriate use of the Commission's authority and resources.

Respectfully submitted June 17, 2016 at San Francisco, California.

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